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RUEHCG/AMCONSUL CHENNAI PRIORITY 8660  
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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 000801

SIPDIS

DEPARTMENT FOR SCA/INS

E.O. 12958: DECL: 08/26/2018

TAGS: PGOV PREL PTER PHUM CE

SUBJECT: SRI LANKA: JOURNALIST TISSAINAYAGAM CHARGED UNDER THE PREVENTION OF TERRORISM ACT

REF: A) COLOMBO 767 B) COLOMBO 696 C) COLOMBO 280

Classified By: CHARGE MICHAEL DeTAR. REASONS: 1.4(b,d).

¶1. (C) SUMMARY: State prosecutors charged detained journalist J.S. Tissainayagam on August 25 in High Court under the Prevention of Terrorism Act for conspiracy to discredit the government, intent to aid and abet a terrorist organization, and accepting money from non-governmental organizations to fund his magazine. The crux of the government's case is that in 2006 the journalist published articles critical of the government with the intent of furthering the "Tamil Tiger" cause. Ambassador met Attorney General De Silva on August 21 to suggest that the government free Tissainayagam on bail pending trial. The Attorney General indicated that he would weigh all aspects of the case, including humanitarian considerations, when making a decision whether to recommend bail. However, the judge at the arraignment denied Tissainayagam's bail application on the grounds that he was subject to a national security detention order. End summary.

Tissainayagam Charged with Aiding Tigers

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¶2. (C) Journalist J.S. Tissainayagam, columnist for the Sunday Times, publisher of North Eastern Monthly magazine, and operator of the website OutreachSL, was produced in High Court on August 25 and charged with conspiracy to aid the Liberation Tigers of Tamil Eelam (LTTE). The presiding judge set a trial date of September 9. The charges against Tissainayagam (drafted in Sinhala), have still not been made public, although various newspapers have summarized them. According to an English translation we have seen, the first two counts under the Prevention of Terrorism Act (PTA) allege that Tissainayagam conspired "with persons unknown... to cause the commission of acts of violence or racial or communal disharmony and brings (sic) the government into disrepute, through the printing or distribution of the publication North Eastern Monthly magazine..." The third charge, under the December 2006 emergency regulations, states that "an offence has been committed by contributing or collecting or obtaining information or obtaining information relating to or donating funds for the purpose of terrorism through the collection of funds from non-governmental organization for the North Eastern Monthly magazine..."

¶3. (C) The indictment then quotes two paragraphs from "North Eastern Monthly" articles Tissainayagam published in July 2006 and December 2006: "Providing security to Tamils now will define northeastern politics of the future... It is fairly obvious that the government is not going to offer them any protection. In fact it is the state security forces that are the main perpetrators of the killings." The second article states, "With no military option (the government) buys time by offering watered-down devolution... Such offensives against the civilians are accompanied by attempts to starve the population by refusing them food as well as medicines and fuel, with the hope of driving out the people of Vaharai and depopulating it. As this story is being written Vaharai is being subject to intense shelling and aerial bombardment."

Case received "Special Handling"

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¶4. (C) Mrs. Tissainayagam told Pol Chief on August 15 that mutual friends introduced her to Additional Solicitor General Palitha Fernando, who helped set up a meeting for her with Attorney General C. R. De Silva. According to Mrs. Tissainayagam, her contacts in the Attorney General's office told her that her husband's "special" case was receiving "special handling." These sources said that the senior State Counsel in charge of preparing the indictment, Manohara (Menaka) Wijesundera, was the sister of the presiding judge of the High Court where the case was filed. Mrs. Tissainayagam confided that her hopes now rested on having her husband released on bail -- which, under the PTA, only

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the Attorney General can recommend.

Ambassador Raises Question of Bail with Attorney General

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¶5. (C) Ambassador met Attorney General C. R. De Silva on August 21 to discuss the case. Ambassador urged the Attorney General to weigh all the circumstances of the case, including whether there was a risk that Tissainayagam would flee, as well as humanitarian considerations. He noted that Tissainayagam's health has deteriorated and that his father is critically ill. The Attorney General said he would consider all the factors in the case, including humanitarian ones, in making a decision on bail. However, at the arraignment, presiding Judge Deepali Wijesundera refused Tissainayagam's lawyers' request for bail on the grounds that he was subject to a detention order under the emergency regulations.

Tissa's "Confession" - Where Did Get his Money?

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¶6. (C) De Silva also told Ambassador that while in detention Tissainayagam had drafted and signed a confession in Tamil. The "confession" was not cited in the indictment, but according to sources in the state counsel's office, is being held in reserve for the trial. Tissainayagam's wife noted, however, that Tissainayagam, whose primary language is English, almost never writes in Tamil. She also pointed out that those responsible for his detention and prosecution do not understand Tamil.

¶7. (C) One statement the accused signed in detention merely recites the numbers of several checks he withdrew from the business account of the publishing company to pay the expenses of his website. It is alleged that Tissainayagam has not been able to account for funding he received for the magazine and website from the project Facilitating Local Initiatives for Conflict Transformation (FLICT), co-sponsored by the German development corporation GTZ, the British High Commission, and Australia (AusAid). In a response to a letter from Human Rights Watch, Secretary in the Ministry of Human Rights Rajiva Wijesinha (also head of the government's

peace secretariat) implied that Tissainayagam had received money from the Tamil Relief Organization. (Note: the TRO was considered a legitimate humanitarian organization in 2006.) However, no evidence has been cited that Tissainayagam accepted funds from the TRO. The indictment leaves unclear whether the allegations concerning the bank accounts are intended to show that Tissainayagam may have received money from LTTE sources, diverted money to the LTTE, or simply used donor money to further the LTTE cause.

**¶8. (C) COMMENT:** The case against Tissainayagam is probably the first trial under the Prevention of Terrorism Act since its suspension by the 2002 Ceasefire Agreement (abrogated by the government in January 2008). It is almost certainly the first ever filed against a journalist under the PTA - a measure the Attorney General himself characterized as "draconian." There is no doubt that Tissainayagam, a Tamil nationalist, shares some of the political goals of the Tamil Tigers. It is also not in dispute that Tissainayagam visited the LTTE leadership during the ceasefire agreement - something that was not illegal at the time. It is not clear that it would be illegal now; the PTA is vague enough to permit prosecutions for conduct that "brings the government into disrepute" but is not otherwise illegal. While Tissainayagam's writings appear to most neutral observers to fall well within the normal boundaries of free speech, the government will seek to prove that Tissainayagam intended through his articles to help the cause of the Tamil Tigers. If that is a crime, so the logic goes, then publishing the magazine was a crime - and so was accepting contributions to publish it. However, if expressions of critical views on Sri Lanka's ethnic conflict can be construed as criminal, then there are few journalists in Sri Lanka who can consider themselves safe from conspiracy charges. The case has

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therefore taken on a significance beyond Tissainayagam's individual fate.

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